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Our file no. 326090

June 29, 2007

**Via Email (darryl.boyd@sanjoseca.gov) & Facsimile (408-292-6055)**

Mr. Darryl Boyd  
City of San Jose  
Department of Planning, Building, and Code Enforcement  
200 East Santa Clara Street, 3rd Floor  
San Jose, CA 95113

**Re: Comments on Draft EIR for Coyote Valley Specific Plan  
File No. GP06-02-04 // SCH #2005062017**

Dear Mr. Boyd:

We appreciate this opportunity to submit these comments on behalf of Coyote Valley Research Park, LLC ("CVRP") with respect to the Draft Environmental Impact Report for the Coyote Valley Specific Plan ("CVSP" or "Specific Plan"). Our primary concern is that the Draft EIR and the Specific Plan do not clearly reflect CVRP's existing vested rights to develop its property in accordance with previously issued approvals and mitigation measures. Both documents should acknowledge more expressly CVRP's existing entitlements, and the Draft EIR should be revised in appropriate cases to include mitigation measures specific to the CVRP property, instead of the Specific Plan area-wide mitigations that are otherwise generally applicable to those properties in the Specific Plan area that do not have existing vested rights.

CVRP's property includes the portion of the North Coyote Campus Industrial Area bounded by Bailey Avenue to the south, Santa Teresa Boulevard to the west, Monterey Road to the east, and Tulare Hill to the north. CVRP's property also includes the flood control lands to the west of Santa Teresa Boulevard. For clarification, it should be noted that CVRP's property represents most, but not all, of the 688-acre Coyote Valley Research Park project that the City approved in 2000 (the "Research Park Project"). Cisco Technologies, Inc. ("Cisco") is the owner and developer of the balance of the Research Park Project. As used in these comments, "CVRP" refers specifically to the property currently owned by CVRP, not to the entirety of the Research Park Project.

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Our comments arise mainly from the fact that CVRP (and Cisco) have the vested right to develop the Research Park Project pursuant to a General Plan Amendment, Planned Development Zoning, Vesting Tentative Map, PD Permits, Development Agreement and various other City approvals and agreements granted or entered into in and following 2000, and the Environmental Impact Report prepared and certified by the City in 2000 (collectively, the “City Approvals”). In connection with its issuance of the City Approvals, the City has already examined in detail under CEQA the environmental impacts of developing CVRP’s property as part of the Research Park Project, which contemplates development of up to 6.6 million square feet of campus industrial uses to accommodate 20,000 employees on roughly 385 net acres of land. Based on this comprehensive environmental review, the City adopted a host of mitigation measures to address the impacts of developing CVRP’s site. The City’s Development Agreement with CVRP and Cisco, which runs until 2020, establishes CVRP’s and Cisco’s vested rights to develop the Research Park Project in accordance with the mitigation conditions set out in the City Approvals and other Existing Entitlements (as defined below). CVRP has expended millions of dollars in implementing many of these mitigations.

In addition to the City Approvals, numerous other public agencies – including the U.S. Fish & Wildlife Service, NOAA Fisheries, the Army Corps of Engineers, the California Department of Fish & Game, and the San Francisco Bay Regional Water Quality Control Board – adopted mitigation conditions after extensive consultations. As a result of these various agency reviews and approvals, CVRP already holds federal, state and local permits and entitlements that authorize it to develop its property. The Draft EIR and Specific Plan should be revised to acknowledge CVRP’s right to develop its property in accordance with *either* the City Approvals and these previous authorizations (which are collectively referred to herein as the “Existing Entitlements”), *or* under the land use plan for the CVRP property proposed by the Specific Plan (referred to herein as the “Specific Plan Project”). To the extent the impacts of developing CVRP’s property in accordance with the Specific Plan Project would not exceed the impacts that were previously analyzed under the Existing Entitlements, CVRP should not, if it develops the property in accordance with the Specific Plan Project, be made subject to additional mitigation above and beyond the mitigation measures already in place under the Existing Entitlements.

CVRP’s comments on the Draft EIR flow from this fundamental recognition of its Existing Entitlements and the substantial investment it has made and is currently making in the implementation of mitigations imposed in connection with the Existing Entitlements. As explained more fully below, CVRP’s comments focus on the following key points:

- First, the City should take all necessary steps in both the CVSP and the associated CEQA documents to plan for and preserve the option of development of the CVRP Property in accordance with the Existing Entitlements.
- Second, the mitigation measures in the Draft EIR should, for the Specific Plan Project, be revised to reflect CVRP's unique permitting status and its Existing Entitlements. To that end, the Draft EIR should evaluate what the incremental impacts on CVRP's property would be from developing the site as part of the Specific Plan, in comparison with the impacts of developing the property under CVRP's Existing Entitlements. To the extent there is no incremental impact, or such an impact is already adequately addressed by the existing permit conditions and mitigation measures, CVRP should not be subject to any new or different mitigation measures under the Specific Plan or CVSP EIR. CVRP also should not be subject to mitigation measures where the relevant impact is not caused by the development of CVRP's property, but instead will result from development in other parts of the Specific Plan area.
- Third, many of the mitigation measures in the Draft EIR call for the preparation and adoption of comprehensive mitigation programs that may take a significant period of time to prepare and approve. To the extent these mitigations would apply to CVRP's development under the Specific Plan, the mitigation measures should whenever possible leave open the option that the Specific Plan Project (and perhaps other individual projects within the CVSP area) can craft mitigation programs to address the project's impacts, independent from the completion of mitigation programs covering the entire Specific Plan area. This approach would both recognize CVRP's vested rights and maximize flexibility in implementing the Specific Plan.

**1. The EIR Should Recognize That CVRP Already Has Obtained Permits For Developing Its Property**

The CVSP and Draft EIR do not appear to develop or analyze a scenario in which the CVSP is approved but CVRP's property is developed pursuant to the Existing Entitlements. For example, the CVSP does not explain whether or how land use allocations would be adjusted if the CVRP property were developed pursuant to the Existing Entitlements (*i.e.*, whether the land uses in the rest of the CVSP would remain unchanged, or the 50,000 job/25,000 housing unit caps would remain but the locations of such uses would be reallocated). Also, the CVSP does not identify how infrastructure and other public elements (such as the portion of

the proposed lake on the CVRP property) would be realigned if the CVRP property were developed pursuant to the Existing Entitlements. These issues should be addressed in the CVSP now, in order to avoid the need for future amendments to the CVSP in the event that the CVRP property is developed pursuant to the Existing Entitlements.

Likewise, the Draft EIR does not analyze the environmental impacts of the reasonably foreseeable scenario under which the CVSP that would include development of the CVRP property (and possibly the Cisco property) under the Existing Entitlements and the development of the remainder of the Coyote Valley area under what would necessarily be a modified Specific Plan. As such, the Draft EIR may not fulfill CEQA's mandate that an EIR analyze all reasonably foreseeable consequences of a project. To address these issues, CVRP requests that the City revise the CVSP to accommodate a scenario under which the CVRP property is developed pursuant to the Existing Entitlements (and the adjacent Cisco property is developed under the City Approvals as well). This revision would explain how land use allocations would be adjusted, and how infrastructure and other public elements would be realigned, if the CVRP and Cisco properties were developed pursuant to their respective Existing Entitlements. And as a consequence, the Draft EIR analysis would be expanded so that it included a detailed analysis of the Specific Plan under both scenarios – development of the CVRP property pursuant to either the Existing Entitlements or the Specific Plan Project. The Draft EIR should make clear, however, that no new mitigations are being imposed in connection with CVRP's development under the Existing Entitlements.

## **2. The EIR Should Recognize That CVRP Is Subject To Existing Mitigation Measures**

There has already been a comprehensive review and analysis of the potential environmental impacts that will result from development of CVRP's property under the Existing Entitlements. Based on that review, the City and numerous other public agencies adopted a broad array of mitigation measures and issued permits and authorizations entitling CVRP to develop its property. The current Draft EIR should recognize this existing mitigation. In particular, the Draft EIR should analyze both the land uses that would occur on CVRP's property under the Specific Plan and the land uses that would occur under the Existing Entitlements for the Research Park Project. The Draft EIR should then evaluate the incremental impacts – if any – that will occur on the CVRP property as a result of implementing the Specific Plan. The Draft EIR should undertake this evaluation for all of the relevant environmental impact categories.

To the extent the impacts of developing CVRP's property under the Specific Plan are already adequately addressed by existing mitigation measures, the City should not impose on CVRP any new, different or duplicative measures. CVRP also should not be subject to mitigation measures that address environmental impacts that are caused by the development of land in *other* parts of the CVSP area.

As one example of the prior review and permitting process covering CVRP's site, the City and the state and federal agencies charged with protecting biological resources adopted a full suite of mitigation measures to address the impacts to these resources. Based on their review, the agencies issued approvals and permits authorizing the development of CVRP's property. The discussion of biological impacts in the Draft EIR for the CVSP should be revised to account for the extensive mitigation that is already in place under CVRP's Existing Entitlements.

In its prior EIR for the Research Park Project, the City extensively analyzed the impacts to vegetation and wildlife that would result from the development of CVRP's property. See, e.g., Draft Environmental Impact Report, Coyote Valley Research Park, Vol. 1 (Feb. 2000) (SCH No. 990923031) at pp. 123-55; First Amendment to Draft EIR, Coyote Valley Research Park (Sept. 2000) at pp. III-29 to III-43. The City then adopted comprehensive findings under CEQA that established detailed mitigation measures to address potential impacts to: (a) wetlands and other federal and state jurisdictional waters; (b) riparian habitat; (c) California tiger salamanders; (d) nesting raptors; (e) burrowing owls (even though no owls were found to occupy the project site); (f) bats; (g) ordinance-sized trees including native oaks and designated Heritage trees; and (h) runoff into aquatic habitat in Fisher and Coyote Creeks. City Resolution No. 69957 (adopted Oct. 24, 2000) at pp. 23-35. Based on its CEQA review and the adoption of mitigation, the City granted planning and zoning approvals for developing CVRP's property, and it entered into a 20-year Development Agreement.

In addition to the specific mitigation measures adopted by the City, the federal resource agencies adopted Biological Opinions in 2001 that imposed numerous additional conditions to protect endangered and threatened species. In particular, the U.S. Fish and Wildlife Service adopted a Biological Opinion in July 2001 that included various terms and conditions to address potential impacts to a number of animal and plant species, including the California red-legged frog, the bay checkerspot butterfly, the salt marsh harvest mouse, the California clapper rail, the Santa Clara Valley dudleya, the Metcalf Canyon jewelflower, the Coyote ceanothus, and the Tiburon paintbrush. In September 2001, NOAA Fisheries adopted a Biological Opinion that included terms and conditions to protect the Central California Coast steelhead and its critical habitat. Together, these

Biological Opinions authorize development of CVRP's property in accordance with the requirements of the federal Endangered Species Act.

In September 2001, the Army Corps imposed additional conditions to protect wetlands and water quality and gave its authorization under the federal Clean Water Act for activities impacting waters of the United States. The California Department of Fish & Game and the San Francisco Bay Regional Water Quality Control Board issued the necessary state authorizations, imposing further mitigation measures. CVRP has already made substantial progress in fulfilling the mitigation conditions that apply to its property.

These local, state and federal agency authorizations establish a comprehensive set of mitigation measures to address the impacts to biological resources that would result from developing CVRP's property, whether under the Existing Entitlements or under the Specific Plan. In recognition of this existing mitigation, the Draft EIR should evaluate the incremental impacts to biological resources that would result from developing CVRP's property under the Specific Plan, in comparison to the impacts that would result from developing the property under the Existing Entitlements. To the extent the existing mitigation already addresses the incremental impacts of developing CVRP's property under the Specific Plan, CVRP should not be subject to new, different or duplicative mitigation.

In addition, CVRP should not be subject to mitigation addressing impacts to biological resources caused by the development of *other* properties within the CVSP. Again, the impacts of developing CVRP's land have already been extensively studied, mitigation measures have already been imposed, and a set of permits and authorizations have already been granted.

**3. The Mitigation Measures In The EIR Should Be Revised To Allow For The Development Of Individual Properties In Accordance With Project-Specific Mitigation That Is Equivalent To, But Independent From, The Completion Of Specific Plan-Wide Mitigation Plans, Policies And Ordinances**

There are a number of mitigation measures in the EIR that require the preparation and adoption of CVSP area-wide mitigation plans or policies before construction can proceed. For example, there are various mitigation measures relating to biological resources that call for the preparation of an overall CVSP Resources Management Plan. See, e.g., Draft EIR at p. 290. Another example is the mitigation for land use conflicts, which requires that all CVSP development comply with future CVSP Design Guidelines, which have not yet been adopted. See Draft EIR at p. 112. The mitigation for impacts to cultural resources similarly

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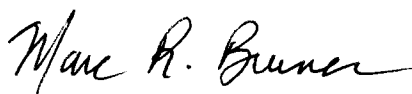
requires the development several comprehensive plans covering the entire CVSP area. See *id.* at p. 233 (Archeological Resources Management Plan) and p. 234 (Architectural Treatment Program Plan).

The preparation and final adoption of Specific Plan area-wide mitigation plans and policies will likely require a significant amount of time and effort. To the extent that these mitigations would apply to CVRP's development under the Specific Plan after performing the analysis described in Section 2 above, the mitigation measures should whenever possible leave open the option that the Specific Plan Project (and perhaps other individual projects within the Specific Plan area) can craft mitigation programs to address the project's impacts, independent of the completion of mitigation programs covering the entire Specific Plan area. This approach would ensure that the goal of the mitigation measure is satisfied, provide a more flexible, workable and practical approach to plan implementation, and recognize the extensive review and permitting process that has already been completed for the CVRP property and the Existing Entitlements. Such an approach would also recognize and give appropriate credit to CVRP for the major infrastructure and other mitigations it has already completed or commenced.

### **Conclusion**

We appreciate the City's consideration of these comments. CVRP representatives would be pleased to discuss these comments with City staff at your convenience.

Sincerely yours,



Barbara J. Schussman  
Marc R. Bruner

cc: Stuart Shiff, Coyote Valley Research Park, LLC  
Margo Bradish, Esq., Cisco Technology, Inc.